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## ORDER

The court has conducted a *de novo* review of the record in this case in accordance with 28 U.S.C. §636(b)(1)(B) and (C) and Local Rule IB 3-2 and determines that the Findings and Recommendation of Magistrate Judge Foley should be accepted and adopted.

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1 IT IS THEREFORE ORDERED that Magistrate Judge's Findings and Recommenda-  
2 tion (#95, entered June 2, 2009) is ACCEPTED and ADOPTED, Defendants' Motion to Dismiss is  
3 denied.

4 Dated: June 15, 2009.

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7 **ROGER L. HUNT**  
8 Chief U.S. District Judge  
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